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Application Serial No. 10/669,222
Reply to Office Action dated October 4, 2006

REMARKS

Initially, the Applicant would like to thank the Examiner for her thorough review of the application in connection with pointing out certain formal claim matters. To address the points raised by the Examiner on the top of page 2 of the Office Action, please note that claims 5 and 17 have been amended. More specifically, the range set forth in claim 5 has been amended to correspond to the disclosure found on page 4, line 15 of the specification, while claim 17 was amended for clear antecedent basis purposes. In addition to these changes, each of claims 1, 18 and 45 has been amended to add a terminal period. Based on these changes, withdrawal of the formal rejections is respectfully requested.

With respect to the prior art rejections, all of the claims currently stand rejected based on Sander, either alone or in combination with Evenson or Roush. Initially, it is respectfully submitted that there exists certain inconsistencies in the rejections outlined. First of all, the cover sheet lists all the claims as being rejected based on prior art. However, claim 17 is never listed in any prior art rejection heading. Based on a indication made on page 3 of the Office Action, it is believed the Examiner just intended to include that claim in the § 102 rejection made. More importantly, please note that, for at least rejecting claims 21, 23 and 27, it was deemed necessary to modify Sander without any additional prior art in connection with the § 103 rejection of claims 15, 16 and 18-28. However, these claims were also rejected under § 102 rejection based on the same reference. Therefore, the position of the Examiner with respect to the application of prior art against at least these claims is unclear to the Applicant.

Regardless of the above, the Applicant has made an earnest attempt to more particularly point out and distinctly claim the invention in a manner which is believed to clearly, patentably define the invention over the known prior art. First of all, it should be readily apparent that one main aspect of the invention is concerned with making a food product that has a high protein content, a high fiber content and a low fat content, while

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also being soft and non-gritty without exhibiting a glassy texture as compared to the known prior art. See, for example, the specification on page 2, lines 4-7, 10-16 and 25-27, page 3, lines 4-7, page 7, lines 12-15 and page 12, lines 22-29. However, as the independent claims perhaps did not clearly set forth all of these important aspects, both independent claims 1 and 30 have been amended accordingly. Therefore, both of the independent claims in this application now require each of the high protein, the high fiber, the low fat, the soft, the non-gritty and the minimum glassy texture aspects of the invention.

It is respectfully submitted that none of the prior art of record teach this combination of features. In particular, Sander is certainly concerned with a high protein food product. The written description itself appears to be based on a work in progress given the listing of trial products considered to fail, followed by changes thereto, in the examples provided. In any case, this patent was known to the Applicant and cited in an IDS filed in this application. Of particular distinction with respect to the subject matter of amended independent claims 1 and 30 is that Sander is not at all concerned with high fiber in addition to the high protein. In this sense, Sander only has corresponding teachings to that discussed in the Background of the Invention section of the present application in connection with known high protein products. Sander provides many specific product examples, with the fiber content only ranging from 3-8.7%. This is in contrast to the present invention wherein the fiber content is as high as 35%, a more than four (4) fold increase over Sander. Even taking the embodiment of the invention set forth in the example discussed on pages 24 and 25 of the present application, the fiber content is 16.5% (see page 25, line 16), with the fiber coming from both insoluble and soluble sources.

Sander is simply not concerned with any combination of high protein and high fiber. As indicated in the present application, the high fiber content has a significant affect on the overall characteristics of the product (which would be considered unacceptable with just high protein alone). Therefore, Sander cannot exhibit the qualities

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of the invention. The above-listed portions of the present specification outline certain product qualities (now claimed) which Sander actually teaches away from. For instance, the present specification, as well as claims 1 and 30, outlines the reduced or minimum glassy texture of the present food product. That is, an object of the present invention is to minimize glassy texture. On the other hand, Sander clearly indicates that the products produced in accordance with the '033 patent have a glassy appearance. See, for example, column 3, line 65 and column 7, lines 8 and 9.

Although it is considered that the amendments to the independent claims, with respect to the invention aspects discussed above, patentably define the invention over the applied Sander reference, additional changes were made to certain dependent claims to even further set forth these distinctions. In particular, claim 19 has been amended to recite a total fiber range between the 16.5% set forth in example 1 and the 35% limit of claim 1. A corresponding limitation is set forth in claim 38 which is dependent on independent claim 30. Therefore, in accordance with these claims, the invention has basically between 2 to 4 times the highest fiber content potentially envisioned in Sander. Dependent claim 21 specifies that the fiber includes both soluble and insoluble fiber sources, a feature not disclosed in the applied prior art. Claim 23 emphasizes another aspect of the invention wherein the food product is completely free of any absorbed fat. This feature is brought out, for example, on page 22, line 22 of the present application and is non-existent in Sander.

Another emphasized aspect of the present invention concerns the use of a high extruder screw speed in making the high protein, high fiber product. See, in particular, page 2, lines 16-19 of the present application, as well as claim 34 which requires the extruder screw to operate in the range of about 600-800 RPM. The highest speed disclosed in Roush, which is relied upon by the Examiner to meet this claim, is seen to be 250 RPM as set forth in column 10, line 1 of the '996 patent. Although the Examiner will likely be able to find a patent disclosing an extruder having a screw which operates in the claimed range, it must be realized that this feature is claimed in combination with

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the particular ingredients of the present invention to produce a particular product, specifically with a limited residence time (claim 33), required temperature and pressure ranges (claim 32) and certain recited amounts of mechanical energy (claim 31). It is respectfully submitted that the known prior art does not disclose or suggest this combination of features.

Based on the above remarks and the amendments made to the claims, it is respectfully submitted that the application should now be in clear condition for allowance such that allowance of all the claims and passage of the application issue are respectfully requested. If the Examiner should have any additional concerns regarding the allowance of this application, she is cordially invited to contact the undersigned at the number provided below if it would further expedite the prosecution of the application.

Respectfully submitted,



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